Response to
Additional Questions for the Record
to
Blair Levin

Before the
House Subcommittee on Communications and Technology

Related to the Subcommittee Hearing on

From Introduction to Implementation: A BEAD Program Progress Report

Hearing Date: September 10, 2024
Answers Submitted October 11, 2024

From the Honorable Earl L. "Buddy" Carter

1. In your opinion, will the American Broadband Deployment Act allow for BEAD projects to be swiftly deployed and therefore, ensure there is less government waste?

Thank you for your question, which gets at several important issues.

With respect, however, I would challenge the premise of the question. That is, in my experience in my two stints in government and over three decades working in and with private enterprises, generally there is a tension between speed and avoiding waste. It is easy to get things done quickly if one does not worry about waste or accountability.

A perfect example of this was the FCC Rural Deployment Opportunity Fund (RDOF) reverse auction. As Ranking Member Pallone noted, FCC Chair Pai accelerated that auction to assist then President's Trump re-election effort.[1] The RDOF effort, which one could argue was fast, resulted in enormous waste.

For example, instead of taking the time to construct and use accurate maps, it used maps that included as unserved locations where there was obviously already broadband coverage, such as in Fisherman's Wharf in San Francisco, Apple headquarters, the Massachusetts Institute of Technology campus and several large airports including international hubs in Dallas-Fort Worth and San Francisco.[2]

As the head of the Competitive Carriers Association noted "We knew the data was not accurate. The FCC told Congress that 'no, we're absolutely certain that the first phase of this that we do,

[1] Let us put aside the question of whether the FCC should be used for such partisan purposes as, while important and complicated, is not germane to your question. What is germane is Ranking member Pallone's observation that "We do not want a repeat of the Republican FCC's Rural Digital Opportunity Fund program, which was rushed in 2020 to try and give then President Trump a favorable talking point on the campaign trail. From the start, it was burdened by waste and plagued by providers defaulting on their commitments to build out networks. This program gave us an invaluable lesson in how not to design a broadband program."
[2] https://www.fierce-network.com/financial/cca-warns-up-to-1b-rdof-funds-could-be-wasted

there won't be any areas that have broadband coverage.' Well, they were absolutely wrong. And now we've shown that not only were they wrong, but they were seriously wrong."

As another example of prioritizing speed over avoiding waste, the 2020 FCC did not take the time to do an appropriate due diligence on the bidders. As a result, the FCC chose to allow clearly unqualified bidders into the auction.

For example, LTD Broadband, a fixed wireless provider, won more subsidies than any other bidder, garnering $1.321 billion in subsidies for 528,088 locations. To meet what it promised the FCC, it would have to build out gigabit fiber, something it has no track record doing, and do so faster than many enterprises with a long track record of deploying fiber. Further, the record indicated LTD had defaulted in a previous auction. In 2022, the FCC found that LTD Broadband had "failed to timely receive eligible telecommunications carrier status in seven states, rendering it ineligible in those states for support. Ultimately, the FCC review concluded that LTD was not reasonably capable of deploying a network of the scope, scale, and size required by LTD's extensive winning bids."

LTD was far from the only problem. While FCC had initially announced RDOF awards totaling $9.2 billion, the final awards were just over $6 billion,[3] as about one-third of the awards resulted in a default. In addition, there have been defaults on about 1.7 million locations and that number could grow bigger.[4]

So, in the case of RDOF, the 2020 FCC's desire for speed ultimately led to both waste and, for many Americans, delay in when they will have access to broadband networks.

It is possible, however, to optimize for both speed and for avoiding waste.

Here, the Treasury Department's $10 billion Capital Projects Fund (CPF) is a shining example of speed that, at least based on the data we have to date, does not appear to have resulted in waste. It has already awarded nearly all its funds to state projects.[5]

We should not, however, use the CPF's success as evidence to criticize BEAD. BEAD was different because Congress mandated that BEAD comply with two conditions that added significant time to the program as Congress clearly—as to BEAD--prioritized avoiding waste over speed.

First, with Capital Projects, Congress did not require the allocations to be based on a new FCC map. With BEAD, Congress did. While the map is an ongoing project, there were a lot of planning processes at the states and at NTIA that could not move forward without the initial map and challenge process being completed, which took more than half the time between the signing of the legislation and now.

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[3] https://docs.fcc.gov/public/attachments/DA-23-1185A1.pdf

[4] https://www.ntia.gov/speechtestimony/2024/building-infrastructure-better-connected-world?utm_campaign=Newsletters&utm_medium=email&utm_source=sendgrid

[5] According to the Treasury website, "The Treasury Department began announcing state awards in June 2022. To date, CPF has awarded approximately $9.6 billion for broadband, digital technology, and multi-purpose community center projects in all states and the District of Columbia, which states estimate will reach over two million locations, in addition to the hundreds of thousands of individuals who will be served annually by multi-purpose community facilities."

The second reason Capital Projects could move more quickly than BEAD is that Congress only required Capital Projects to make progress while Congress asked the BEAD program to finish the job of connecting all Americans to broadband.

Capital Projects, like prior and other deployment programs such as RDOF and USDA's ReConnect, allocates funding that everyone agrees is insufficient, and then makes incremental progress in connecting unserved areas. BEAD does the opposite. It puts a huge amount of money on the table but requires states to color in the entire map. It's a totally different, and much more difficult, policy problem.[6]

If Congress wanted BEAD to prioritize speed, it would have been better off to give the funding to the FCC and ask it to run a national reverse auction rather than a state grant program. Considering the failure of the RDOF program, it is understandable that Congress made the decision it did not to do so.

Let me note, however, that when it comes to avoiding delay and waste, we agree on many important points. For example, we agree, as you said just a few weeks ago on September 26, 2024, that NTIA's approval of the Georgia state plan "represents a large step towards the deployment of broadband in rural Georgia."

Perhaps more important, we also agree, as you further stated, that "if we do not reform our broken permitting system, many Americans who need connectivity the most will continue to miss out." The 2010 United States Broadband Plan called for several "dig-once" initiatives that constitute one way to accelerate permitting for broadband deployment efforts. There are multiple other ways to address the issue. Unfortunately, we have not yet acted on that need to reform permitting. The situation is complex, involving federal, state and local laws and regulations. I believe there can be creative solutions, including through advanced mapping technology, artificial intelligence and other tools to address this issue. Further, as I and my co-author explained in a Harvard Business Review article, there are ways to change the incentives to reduce the friction to deployment that permitting often creates. I congratulate you on raising that issue and hope that the Committee focuses attention on addressing this problem.

From the Honorable Russ Fulcher

1. As part of NTIA's draft guidance is considering when it comes to clarifying the limited circumstances in which satellite operators and certain fixed wireless providers can access BEAD funding, NTIA determined that any alternative technology must demonstrate that it will reserve sufficient network capacity to actually serve every eligible location within a grant area. New Street Research has previously revealed that even fixed wireless providers using licensed spectrum typically only have sufficient excess capacity to serve 10- 15 percent of the homes and businesses in markets where they offer service. Although NTIA has required providers to demonstrate that they can simultaneously serve every household in prior grant programs, that requirement is noticeably absent from the BEAD Program's definition of "qualifying broadband" service. Given that New Street

[6] The New York Times writer David Brooks noted that one of life's fundamental lessons is "When you have 90% of a large project finished, finishing up the final details will take another 90%." While I would not use those specific numbers in describing the difference between connecting unserved locations in the United States and connecting 100% of unserved locations in the United States, Brooks' aphorism correctly points to why the Capital Projects and BEAD timing can be so different.

Research has previously estimated that fixed wireless providers only have sufficient excess capacity to serve only a small percentage of the homes and businesses in markets that they claim, shouldn't NTIA extend the capacity requirement in its "alternative technologies" guidance to any wireless offering that is part of the BEAD solution?

Thank you for that very astute question.

I think my New Street colleagues, who are honored that you have read and cited their work, have done a great job of providing an accurate economic and technical analysis of the trade-offs in the market. Their purpose, of course, is not to advocate for policy but rather to provide investors and others insight into the realities of the market. It is important that policy makers based their policy views on such realities.

In this case, your question illustrates the policy trade-offs that NTIA must address.

There is no doubt that Fixed Wireless Access is a valuable addition to the competitive landscape of broadband providers. As Chair Rosenworcel recently noted, fixed-wireless networks are "providing some real competitive pressure on a lot of incumbent broadband providers today."

In funding unserved and underserved areas however, the FCC and Congress have taken the view that the government should only fund one provider. There are several good reasons for doing so. The one articulated most often is that government should not fund "overbuilding" as that would both waste scarce government dollars and be unfair to the enterprise that used solely private funds to deploy a network.

If the government is only funding one provider, however, it wants to assure that that provider will fund all, or close to all, the locations in that defined area. If it funds a provider who would not be able to serve all the locations, the funding will not achieve the universal service mission and the access divide will continue for many locations in the area.

NTIA could fund some Fixed Wireless providers, but unless that provider had the capacity to provide service to all the locations in that designated area, NTIA would have to either fund an additional provider, and thus essentially fund an overbuilder of the first grantee or leave many locations unserved. Neither strikes me as an attractive option. Further, both are contrary to the policy consensus and the latter is contrary to the intent of the law.

In that light, I would agree that the capacity requirement should generally extend to all technologies that receive BEAD funding. I think that is embedded in the NTIA guidance related to the standards for a reliable broadband service, but whether that is the current NTIA position is a question best addressed to NTIA.